

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No. 10/004,089
Filing Date..... October 23, 2001
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Group Art Unit 2151
Examiner.....K. Tang
Attorney's Docket No.....PDNO. 10017888-1
Confirmation No..... 9254
Title:COMPUTER-ASSISTED EQUIPMENT HAVING A USER INTERFACE...

BRIEF OF APPELLANT UNDER 37 CFR 41.37

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Appellant appeals from the final rejection, mailed January 10, 2008, of claims 1-17, 24-27 and 33-36. This Appeal Brief is pursuant to 37 CFR 41.37. The Commissioner is authorized to charge the fee required under 37 C.F.R. § 41.20(b)(2) to Deposit Account No. 08-2025.

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I. REAL PARTY IN INTEREST

The real party in interest of this application is Hewlett-Packard Development Company, L.P.

II. RELATED APPEALS AND INTERFERENCES

Appellant's undersigned legal representative and the assignee of the pending application are aware of no appeals or interferences which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF THE CLAIMS

Claims 1-17, 24-27 and 33-36 are pending and stand finally rejected. Appellant appeals the rejection of claims 1-17, 24-27 and 33-36.

IV. STATUS OF AMENDMENTS

An amendment under 37 C.F.R. 1.116 was filed on March 10, 2008 after the final rejection dated January 10, 2008. This amendment was entered by the Examiner in an Advisory Action dated March 31, 2008, but was not deemed by the Examiner to place the application in condition for allowance.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Concise explanations of the subject matter defined in the independent claims involved in the appeal follow with respect to exemplary illustrative embodiments of the specification and figures.

Referring to independent claim 1:

1. A method of configuring a user interface (element 210 of FIG. 2; page 6, lines 6-15) of computer-assisted equipment (element 100 of FIG. 3; page 7, lines 13-22) according to a service program (elements 510-530 of FIG. 4; page 9, lines 5-10), comprising the steps of:

said computer-assisted equipment transmitting a message to a remote computer (element 500 of FIG. 4; page 8, lines 9-19);

said remote computer determining that said service program is available on said remote computer and is suitable for use with said computer-assisted equipment, said determining being based on said message (element 510 of FIG. 4; page 8, lines 20-30);

said remote computer transmitting said service program to said computer-assisted equipment (element 520 of FIG. 4; page 9, lines 5-10);

said remote computer conveying plural interface instructions that allows said computer-assisted equipment to cooperate with said remote computer in accordance with said service program, wherein said service program programs one or more selectors located on a surface of the computer-assisted equipment, wherein said selectors are configured to select and play Internet broadcasts and MP3 files stored on media resident within the remote computer and to control additional service programs running on the remote computer (element 540 of FIG. 4; page 9, lines 26-31);

said computer-assisted equipment configuring plural user interfaces containing respective functions of said computer-assisted equipment and functions of the remote computer (element 550 of FIG. 4; page 10, lines 5-10);

displaying the user interfaces on the computer assisted equipment (element 210 of FIG. 2; page 6, lines 6-15);

said computer-assisted equipment receiving content including audio, video and text while a remote control device receives interface instructions and controls the content, wherein after the content is received, the content is buffered in a memory device (element 560 of FIG. 5; page 7, lines 1-12); and

said service program programming one or more of selectors to use the buffered content to perform freeze frame and instant replay and for displaying pertinent text

information on the display (elements 510-530 of FIG. 5; page 7, lines 3-12 and page 9, lines 5-10).

Referring to independent claim 10:

10. In a computer-assisted appliance (element 100 of FIG. 3; page 7, lines 13-22), a method for interacting with a remote computer (element 300 of FIG. 2; page 6, lines 23-24) that executes a service program (elements 510-530 of FIG. 4; page 9, lines 5-10), comprising the steps of:

transmitting a service request from said computer-assisted appliance to said remote computer (element 600 of FIG. 5; page 10, lines 16-18);

receiving interface instructions for said computer-assisted appliance that allows said computer-assisted appliance to cooperate with said remote computer in accordance with said service program, wherein said service program programs one or more selectors located on a surface of said computer-assisted appliance, wherein said selectors are configured to select and play Internet broadcasts and MP3 files stored on media resident within the remote computer and to control additional service programs running on the remote computer (element 610 of FIG. 6; page 10, lines 19-26);

transmitting a user input to said remote computer in accordance with said interface instruction (element 620 of FIG. 6; page 10, lines 27-29);

receiving content from said remote computer in response to said interface instruction (element 630 of FIG. 6; page 10, lines 29-31), and

said computer-assisted appliance configuring plural user interfaces containing functions of said computer-assisted appliance and functions of the remote computer (element 550 of FIG. 4; page 10, lines 5-10);

displaying the user interface on the computer assisted appliance (element 210 of FIG. 2; page 6, lines 6-15);

said computer-assisted applicant receiving content including audio, video and text while a remote control device receives interface instructions and controls the content, wherein after the content is received, the content is buffered in a memory device (element 560 of FIG. 5; page 7, lines 1-12); and

said service program programming one or more of selectors to use the buffered content to perform freeze frame and instant replay and for displaying pertinent text information on the display (elements 510-530 of FIG. 5; page 7, lines 3-12 and page 9, lines 5-10).

Referring to independent claim 24:

24. In a remote computer (element 300 of FIG. 2; page 6, lines 23-24), a method for cooperating with computer-assisted equipment (element 100 of FIG. 3; page 7, lines 13-22), comprising the steps of:

receiving a request for service from said computer-assisted equipment (element 700 of FIG. 7; page 11, lines 3-5);

determining that a service program suitable for use with said computer-assisted equipment is available, said service program including plural interface instructions (element 710 of FIG. 7; page 11, lines 6-10);

transmitting said interface instructions to said computer-assisted equipment, said interface instructions allowing said computer-assisted equipment to cooperate with said remote computer in accordance with said service program, wherein said service program programs one or more selectors located on a surface of the computer-assisted equipment, wherein said selectors are configured to select and play Internet broadcasts and MP3 files stored on media resident within the remote computer and to control additional service programs running on the remote computer (element 720 of FIG. 7; page 11, lines 11-12);

cooperating with said computer-assisted appliance in accordance with said service program, wherein said service program configures plural user interfaces for said computer-assisted equipment containing functions of the computer-assisted equipment and the remote computer (element 730 of FIG. 7; page 11, lines 12-18);

displaying the user interfaces on the computer assisted equipment (element 210 of FIG. 2; page 6, lines 6-15);

receiving content from said computer-assisted equipment including audio, video and text while a remote control device receives interface instructions and controls the content, wherein after the content is received, the content is buffered in a memory device (element 560 of FIG. 5; page 7, lines 1-12); and

programming one or more of selectors to use the buffered content to perform freeze frame and instant replay and for displaying pertinent text information on the display (elements 510-530 of FIG. 5; page 7, lines 3-12 and page 9, lines 5-10).

Referring to independent claim 33

33. One or more computer-readable media having computer-readable instructions thereon which, when executed by a computer, cause the computer to perform a method comprising the steps of:

receiving a service query from a computer-assisted appliance (element 800 of FIG. 8; page 11, lines 24-27);

determining that a service program suitable for use with said computer-assisted appliance is available (element 810 of FIG. 8; page 11, lines 27-30);

transmitting interface instructions to said computer-assisted appliance, wherein said interface instructions allowing said computer-assisted appliance to cooperate with said remote computer in accordance with said service program (element 540 of FIG. 4; page 9, lines 26-31);

transmitting said service program, wherein said service program programs one or more selectors located on a surface of the computer-assisted appliances, wherein said selectors are configured to select and play Internet broadcasts and MP3 files stored on media resident within the remote computer and to control additional service programs running on the remote computer (element 540 of FIG. 4; page 9, lines 26-31);

said service program configuring plural user interfaces for said computer-assisted appliance containing functions of the computer-assisted appliance and functions of the remote compute (element 540 of FIG. 4; page 9, lines 26-31);

displaying the user interfaces on the computer-assisted appliance (element 210 of FIG. 2; page 6, lines 6-15);

receiving information from said computer-assisted appliance, said information being conveyed from said interface and resulting from a user interacting with said interfaces (element 550 of FIG. 4; page 10, lines 5-10);

receiving content from said computer-assisted equipment including audio, video and text while a remote control device receives interface instructions and controls the content, wherein after the content is received, the content is buffered in a memory device (element 560 of FIG. 5; page 7, lines 1-12); and

programming one or more of selectors to use the buffered content to perform freeze frame and instant replay and for displaying pertinent text information on the display (elements 510-530 of FIG. 5; page 7, lines 3-12 and page 9, lines 5-10).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A. The Office Action rejected claims 1-17, 24-26 and 33-36 under 35 U.S.C. 103(a) as allegedly being unpatentable over Kusano et al. (U.S. Patent No. 2003/0074421) in view of Jain et al. (U.S. Patent No. 6,144,375) and also rejected claim 27 under 35 U.S.C. 103(a) as allegedly being unpatentable over Kusano et al. in view of the Examiner's Official Notice.

VII. ARGUMENT

A. The rejection of claims 1-17, 24-26 and 33-36 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kusano et al. (U.S. Patent No. 2003/0074421) in view of Jain et al. (U.S. Patent No. 6,144,375) and the rejection of claim 27 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kusano et al. in view of the Examiner's Official Notice should be withdrawn because these claims contain features that are not disclosed, taught or suggested by any combination of the cited references.

On pages 2-8 of the January 10, 2008 Office Action, the Examiner rejected 1-17, 24-26 and 33-36 under 35 U.S.C. 103(a) as allegedly being unpatentable over Kusano et al. (U.S. Patent No. 2003/0074421) in view of Jain et al. (U.S. Patent No. 6,144,375) and also rejected claim 27 under 35 U.S.C. 103(a) as allegedly being unpatentable over Kusano et al. in view of the Examiner's Official Notice.

According to case law and the MPEP, all of the claimed elements of an Appellant's invention must be considered. (*In re Kotzab*, 55 USPQ 2d 1313, 1318 (Fed. Cir. 2000). *MPEP 2143*.) [*emphasis added*]. If one of the elements of the Appellant's invention is missing from or not taught in the cited references and the Appellant's invention has advantages not appreciated by the cited references, then no prima facie case of obviousness exists. (*MPEP 2143.03*). The Federal Circuit Court has stated that it was error not to distinguish claims over a combination of prior art references where a material limitation in the claimed system and its purpose was not taught therein. *In Re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

For example, Jain et al. merely disclose a buffer with computer assisted equipment receiving video information and Kusano et al. simply disclose providing a user with a user interface for consumer electronic devices. Even though Jain et al. disclose allowing a user to freeze a video frame and replaying archived data, when Jain et al. is combined with Kusano et al., the combined references still fail to disclose, teach, or suggest features included in all of the Appellant's independent claims, namely claims 1, 10, 24 and 33, which includes at least programming the selectors to use buffered content to perform freeze frame and instant replay functions and displaying pertinent text information on the display while the remote control device receives interface instructions and controls the content. Instead, Jain et al. combined with Kusano et al. simply use a viewer with a user interface having a first window for displaying a two-dimensional representation of a three-dimensional model of the real world environment (see paragraph 0031 of Kusano et al. and the Abstract and Summary of Jain et al.).

Next, although the Examiner cited to paragraphs [0046-0048] of Kusano et al. and summarily argued in the Advisory Action dated March 31, 2008 that "it is the selector on the computer-assisted equipment that controls the freeze frame, and instant replay and for displaying the pertinent text information on the display (refer to 0046-0048)", a close reading of these paragraphs from Kusano et al. do not support the Examiner's argument for this language. Instead, the Examiner merely copied and pasted elements from the Appellant's independent claims 1, 10, 24 and 33 and used them along with improper hindsight to support her arguments. As argued above, the combined references do not program the selectors to perform freeze frame and instant replay functions and display pertinent text information while the remote control device receives interface instructions and controls the content (features included in all of independent claims).

It is well settled that references should not be considered together with the benefit of hindsight. Improper hindsight occurs when knowledge and advantages from the Applicant's disclosure is used, which is what the Examiner did in this case, or words or phrases are arbitrarily picked and chosen from references to recreate the Applicant's invention. Crown Operations International, Ltd. v. Solutia, Inc., 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002). In particular, the combination of elements in a manner that reconstructs the Applicant's invention only with the benefit of hindsight is insufficient to present a prima facie case of obviousness. Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 796 F.2d 443, 230 USPQ 416 (Fed. Cir. 1986).

Even if the references in question seem relatively similar "...the opportunity to judge by hindsight is particularly tempting. Hence, the tests of whether to combine references need to be applied rigorously," especially when the Examiner uses a reference that does not explicitly disclose the exact elements of the invention from all of the Applicant's independent claims, which is the case here with the Kusano et al. reference. McGinley v. Franklin Sports Inc., 60 USPQ 2d 1001, 1008 (Fed. Cir. 2001). Since hindsight cannot be used to support the rejections, the combined cited references cannot render the Appellant's invention obvious and the rejection is improper and should be withdrawn. Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.

With regard to the dependent claims, since they depend from the above-argued respective independent claims 1, 10, 24 and 33, they are therefore patentable on at least the same basis. (MPEP § 2143.03). Therefore, the Appellant respectfully submits the claims are allowable for at least the above-mentioned compelling reasons.

B. Conclusion

Accordingly, the failure of the cited references to disclose, suggest or provide motivation for the Appellant's claimed invention indicates a lack of a prima facie case of obviousness (MPEP 2143), and thus, the rejections should be withdrawn. In view of the foregoing, reversal of the rejections of the claims is respectfully requested. As such, for any one of the above-stated reasons, the rejections of the respective claims should be reversed. In combination, the above-stated reasons overwhelmingly support such reversal. Thus, Appellant respectfully requests that the Board reverse the rejections of the claims.

Respectfully submitted,

Date: June 9, 2008

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VIII. CLAIMS APPENDIX

1 1. A method of configuring a user interface of computer-assisted
2 equipment according to a service program, comprising the steps of:
3 said computer-assisted equipment transmitting a message to a remote
4 computer;
5 said remote computer determining that said service program is available on
6 said remote computer and is suitable for use with said computer-assisted equipment,
7 said determining being based on said message;
8 said remote computer transmitting said service program to said computer-
9 assisted equipment;
10 said remote computer conveying plural interface instructions that allows said
11 computer-assisted equipment to cooperate with said remote computer in accordance
12 with said service program, wherein said service program programs one or more
13 selectors located on a surface of the computer-assisted equipment, wherein said
14 selectors are configured to select and play Internet broadcasts and MP3 files stored
15 on media resident within the remote computer and to control additional service
16 programs running on the remote computer;
17 said computer-assisted equipment configuring plural user interfaces
18 containing respective functions of said computer-assisted equipment and functions of
19 the remote computer;
20 displaying the user interfaces on the computer assisted equipment;
21 said computer-assisted equipment receiving content including audio, video
22 and text while a remote control device receives interface instructions and controls the
23 content, wherein after the content is received, the content is buffered in a memory
24 device; and
25 said service program programming one or more of selectors to use the
26 buffered content to perform freeze frame and instant replay and for displaying
27 pertinent text information on the display.

1 2. The method of claim 1, wherein said computer-assisted equipment
2 provides entertainment.

1 3. The method of claim 2, wherein said computer-assisted equipment is
2 an audio reproduction system.

1 4. The method of claim 1, wherein said computer-assisted equipment is a
2 remote control device that controls functions of a video entertainment system, said
3 video entertainment system receiving content from said remote computer.

1 5. The method of claim 1, wherein said determining step includes said
2 remote computer informing said computer-assisted equipment that at least one
3 additional service program is available, said computer-assisted equipment selecting
4 from among said service program and said at least one additional service program.

1 6. The method of claim 5, additionally comprising said remote computer
2 receiving a selection from said computer-assisted equipment, said selection
3 indicating which of said service program and said at least one additional service
4 program a user has selected.

1 7. The method of claim 1, wherein said remote computer is a general-
2 purpose computer.

1 8. The method of claim 1, wherein said message is a service request that
2 indicates that said computer-assisted equipment is ready to operate cooperatively
3 with said remote computer.

1 9. The method of claim 1 further comprising said remote computer
2 transmitting content to said computer-assisted equipment under the control of said
3 service program.

1 10. In a computer-assisted appliance, a method for interacting with a
2 remote computer that executes a service program, comprising the steps of:

3 transmitting a service request from said computer-assisted appliance to said
4 remote computer;

5 receiving interface instructions for said computer-assisted appliance that
6 allows said computer-assisted appliance to cooperate with said remote computer in
7 accordance with said service program, wherein said service program programs one
8 or more selectors located on a surface of said computer-assisted appliance, wherein
9 said selectors are configured to select and play Internet broadcasts and MP3 files
10 stored on media resident within the remote computer and to control additional service
11 programs running on the remote computer;

12 transmitting a user input to said remote computer in accordance with said
13 interface instruction;

14 receiving content from said remote computer in response to said interface
15 instruction, and

16 said computer-assisted appliance configuring plural user interfaces containing
17 functions of said computer-assisted appliance and functions of the remote computer;

18 displaying the user interface on the computer assisted appliance;

19 said computer-assisted applicant receiving content including audio, video and
20 text while a remote control device receives interface instructions and controls the
21 content, wherein after the content is received, the content is buffered in a memory
22 device; and

23 said service program programming one or more of selectors to use the
24 buffered content to perform freeze frame and instant replay and for displaying
25 pertinent text information on the display.

1 11. The method of claim 10, wherein said service request includes an
2 indication that said computer-assisted appliance is available and is ready to receive
3 said service program.

1 12. The method of claim 10, wherein said remote computer is one of a
2 portable and a desktop computing device.

1 13. The method of claim 9, wherein said appliance is an audio system that
2 conveys music, and wherein said content includes a music video file.

1 14. The method of claim 13, wherein said user input is a selection of a title
2 of said music video file.

1 15. The method of claim 13, wherein said service program includes
2 instructions that enable said audio system to display a list of music video selections.

1 16. The method of claim 10, wherein said service program influences the
2 function of a display located on said computer-assisted appliance.

1 17. The method of claim 10, wherein said service program influences a
2 function of a remote control device used to control an entertainment device.

1 18. (Canceled).

1 19. (Canceled).

1 20. (Canceled).

1 21. (Canceled).

1 22. (Canceled).

1 23. (Canceled).

1 24. In a remote computer, a method for cooperating with computer-
2 assisted equipment, comprising the steps of:
3 receiving a request for service from said computer-assisted equipment;
4 determining that a service program suitable for use with said computer-
5 assisted equipment is available, said service program including plural interface
6 instructions;
7 transmitting said interface instructions to said computer-assisted equipment,
8 said interface instructions allowing said computer-assisted equipment to cooperate
9 with said remote computer in accordance with said service program, wherein said
10 service program programs one or more selectors located on a surface of the
11 computer-assisted equipment, wherein said selectors are configured to select and
12 play Internet broadcasts and MP3 files stored on media resident within the remote
13 computer and to control additional service programs running on the remote
14 computer;
15 cooperating with said computer-assisted appliance in accordance with said
16 service program, wherein said service program configures plural user interfaces for
17 said computer-assisted equipment containing functions of the computer-assisted
18 equipment and the remote computer;
19 displaying the user interfaces on the computer assisted equipment;
20 receiving content from said computer-assisted equipment including audio,
21 video and text while a remote control device receives interface instructions and
22 controls the content, wherein after the content is received, the content is buffered in a
23 memory device; and
24 programming one or more of selectors to use the buffered content to perform
25 freeze frame and instant replay and for displaying pertinent text information on the
26 display.

1 25. The remote computer of claim 24, wherein said determining step
2 includes receiving a selection as to which service program has been selected by a
3 user of said computer-assisted equipment.

1 26. The remote computer of claim 24, wherein said remote computer is
2 interfaced to a network and wherein said remote computer communicates with a
3 network location available on said network.

1 27. The remote computer of claim 24, wherein said transmitting step is
2 accomplished by way of transmitting said interface instruction using a wireless
3 interface.

1 28. (Canceled).

1 29. (Canceled).

1 30. (Canceled).

1 31. (Canceled).

1 32. (Canceled).

1 33. One or more computer-readable media having computer-readable
2 instructions thereon which, when executed by a computer, cause the computer to
3 perform a method comprising the steps of:

4 receiving a service query from a computer-assisted appliance;

5 determining that a service program suitable for use with said computer-
6 assisted appliance is available;

7 transmitting interface instructions to said computer-assisted appliance,
8 wherein said interface instructions allowing said computer-assisted appliance to
9 cooperate with said remote computer in accordance with said service program;

10 transmitting said service program, wherein said service program programs
11 one or more selectors located on a surface of the computer-assisted appliances,
12 wherein said selectors are configured to select and play Internet broadcasts and
13 MP3 files stored on media resident within the remote computer and to control
14 additional service programs running on the remote computer;

15 said service program configuring plural user interfaces for said computer-
16 assisted appliance containing functions of the computer-assisted appliance and
17 functions of the remote compute;

18 displaying the user interfaces on the computer-assisted appliance;

19 receiving information from said computer-assisted appliance, said information
20 being conveyed from said interface and resulting from a user interacting with said
21 interfaces;

22 receiving content from said computer-assisted equipment including audio,
23 video and text while a remote control device receives interface instructions and
24 controls the content, wherein after the content is received, the content is buffered in a
25 memory device; and

26 programming one or more of selectors to use the buffered content to perform
27 freeze frame and instant replay and for displaying pertinent text information on the
28 display.

29
1 34. One or more computer-readable media as recited in claim 33, wherein
2 said receiving a service query step includes receiving an indicator that informs said
3 computer of a function performed by said computer-assisted appliance.

1 35. One or more computer-readable media as recited in claim 33, wherein
2 said determining step includes said computer searching through a list of service
3 programs.

1 36. One or more computer-readable media as recited in claim 33, wherein
2 said method further comprises said computer-assisted appliance prompting said user
3 for said input.

IX. EVIDENCE APPENDIX

Copies of evidence are not enclosed.

X. RELATED PROCEEDINGS APPENDIX

Appellants are not aware of any related proceedings.